IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 7TH AUGUST 2007 / 16TH SRAVANA 1929

Bail Appl..No. 4620 of 2007(B)

(CRIME NO. 279/2007 OF ADIMALY POLICE STATION)
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PETITIONER:

NOUSHAD, AGED 30 YEARS, S/O.KOYAN,
KOTTEKKUDY HOUSE, NAIKKUNNU, KUNNUMPARA P.O.,
ADIMALY.

BY ADV. SRI.P.K.NISHAD (PUZHITHARA).

RESPONDENTS:
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1. **STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,**
2. **THE SUB INSPECTOR OF POLICE, ADIMALY POLICE STATION, ADIMALY.**

BY PUBLIC PROSECUTOR SRI. S.U. NAZER.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 07/08/2007,THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A. No. 4620 OF 2007

Dated this the 7th day of August, 2007

ORDER

Application for anticipatory bail. The petitioner is a person who has, in the course of investigation, been arrayed as the 6th accused in a crime registered, inter alia, under Secs.420 and 471 of the IPC.

2. The First Information Statement was lodged by the Secretary of a Grama Panchayat on the basis of a letter received from the President of the said Grama Panchayat. The President, in that letter, had informed the Secretary that serious incidents of fraud and crime were being perpetrated in the removal of sand from the area within the Panchayat. The President, it is alleged, on coming to know that such incidents of crime/fraud were taking place in the `Kadavus' in the Panchayat managed to obtain one pass to facilitate transportation of sand on payment of illegal gratification. He

found that the pass issued was a false and forged one. Enclosing the said pass, he wrote a letter to the Secretary. Thereupon, the Secretary lodged the First Information Statement before the police. Strangely, the details of the course adopted by the President is not revealed in the First Information Statement or in the letter which the President sent to the Secretary. In the F.I.R., in the column to describe the name of the accused, it is mentioned that the accused are not known. The F.I.R. was registered on 12/6/07 on the basis of the complaint dated 11/6/07. Investigation continued. Long later, on 12/7/07 accused 1 to 4 were arrayed as accused. It was alleged that they together had entered in a conspiracy and were involved in the illegal act of forging passes and selling them to facilitate illicit transportation of sand. Later, the 5th accused was also arrayed. He surrendered before the learned Magistrate. He was given over to the custody of the police. He was interrogated. The complicity of the petitioner was revealed clearly and a report dated 4/8/07 was filed to array the petitioner as the 6th accused. The petitioner/the 6th accused is now alleged to be one of the conspirators along with other accused. The precise role allegedly played by the petitioner is that he had created forged passes using his computer to facilitate the

implementation of the agreement of the conspirators.

3. This petition was filed as early as on 23/7/07. Not satisfied with the quality of investigation, this Court had made observations on 2/8/07 while discussing the case. It is later that a report has been filed to array the petitioner as an accused.

4. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. He has been brought on the array of parties without any justification. The vague and unsatisfactory complaint by the President as also the First Information Statement lodged by the Secretary must generate doubts and suspicion in the mind of the court. The President has a contumacious role in the whole incident. To cover up his role in the commission of the crime, false allegations are being raised against others. In these circumstances, it is prayed that the discretion under Sec.438 of the Cr.P.C. may be invoked in favour of the petitioner and anticipatory bail may be granted to him.

5. The learned Public Prosecutor opposes the application. The available inputs clearly point to the involvement of the petitioner in the conspiracy and in the execution of the design of the conspirators. The petitioner has to be arrested and interrogated for the investigation to make headway. Permitting

the petitioner to arm himself with an order of anticipatory bail and denial an opportunity of custodial interrogation of the petitioner would virtually frustrate the investigation. There are no circumstances justifying the invocation of such discretion. The petitioner may be directed to appear before the Investigating Officer or the learned Magistrate having jurisdiction and then seek regular bail, submits the learned Public Prosecutor.

6. I shall restrain myself and not express any opinion on the quality of investigation that has been conducted. Inadequate investigation cannot also, at any rate, confer on the petitioner any undeserved advantage at this stage. The petitioner has been brought on the array of accused long after the filing of this bail application. But notwithstanding such delay, I do find indications available in the Case Diary to suggest the complicity of the petitioner, I am satisfied that there is merit in the submission of the learned Public Prosecutor that the petitioner has to be interrogated exhaustively to ascertain all the dimensions of the crime. I find merit in the submission of the learned counsel for the petitioner that the role of the President may also not be above-board. I am of opinion that it is unnecessary to embark on a detailed discussion on that aspect.

Certainly any conscientious Investigator will have to take up that aspect of the case also for consideration in the course of investigation. I stop short there.

7. In the result, this bail application is dismissed; but with the observation that if the petitioner surrenders before the Investigating Officer or the learned Magistrate and seeks bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge